

Message Text

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ACTION TRSE-00

INFO OCT-01 AF-10 ISO-00 SS-20 NSC-07 AID-20 CIAE-00

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E.O. 11652: N/A

TAGS: EFIN, BC

SUBJECT: US-BOTSWANA TAX TREATY NEGOTIATIONS

PASS DEPT OF TREASURY

1. SUMMARY: FIRST ROUND CONCLUDED WITH SEVERAL MAJOR ISSUES SEPARATING TWO DELEGATIONS. SUBSTANTIAL AGREEMENT REACHED ON MANY TYPICALLY DIFFICULT QUESTIONS, WITH OTHERS LIKELY TO FALL INTO PLACE IF PRINCIPAL QUESTION OF TREATMENT OF MINING COMPANIES CAN BE RESOLPED. BOTSWANA HAS SUBSTANTIAL EXTRATERRITORIAL REACH IN TAXING LOCAL MINING OPERATIONS AND IS PRESENTLY UNWILLING TO LIMIT ITS RIGHTS BY

TREATY. END SUMMARY.

2. MAJOR UNDERLYING PROBLEM ARISES FROM FACT THAT BOTSWANA TAXES ONLY INCOME FROM BOTSWANA SOURCES OF BOTH RESIDENTS AND NON-RESIDENTS. PROBLEM EASED BY FACT THAT, IN GENERAL, BOTSWANA SOURCE RULES CONFORM TO U.S. RULES.

3. PRINCIPAL SUBSTANTIVE AREAS OF AGREEMENT AND DISAGREEMENT AS FOLLOWS:

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A. TAXES COVERED. BOTSWANA TAX LAW GIVES NO AUTHORITY FOR TREATY TO BIND LOCAL LOCALITIES WITH RESPECT TO NON-DISCRIMINATION.

B. DEFINITION. DEFINITION OF BOTSWANA CORPORATION DIFFICULT BECAUSE RESIDENCE HAS NO BEARING ON TAX INCIDENCE.

C. BUSINESS PROFITS. BOTSWANA DESIRES TO LEAVE BUSINESS PROFITS OUT OF TREATY. SEEM WILLING TO AGREE TO INCLUSION

ONLY IF PROFITS FROM MINING AND PETROLEUM LEFT OUT. BOTSWANA TAXES INCOME FROM LOCAL MINING ACTIVITIES BY CONSOLIDATING INCOME FROM LOCAL AND OVERSEAS AFFILIATES ACTIVITIES INCLUDING REFINING, PROCESSING AND MARKETING. THIS IN LIEU OF ATTEMPTING TO ADJUST ACCOUNTS OF LOCAL OPERATORS TO ARM'S-LENGTH BASIS. GOB HAS AND USES AUTHORITY TO NEGOTIATE SEPARATE AGREEMENTS WITH MINING COMPANIES WHICH, AMONG OTHER THINGS, SPELLS OUT TAXING RULES. GOB UNWILLING TO NARROW ITS NEGOTIATING LATITUDE BY TREATY. U.S. STATED THIS PROPOSAL UNSATISFACTORY.

D. SHIPPING AND AIRCRAFT. SHIPPING LEFT OUT, AS BOTSWANA IS LANDLOCKED. RE AIRCRAFT, GOB WILLING TO EXEMPT MAJOR CARRIERS IF THEY SHOULD SERVE BOTSWANA IN FUTURE. HAVE PROBLEM, HOWEVER, WITH SMALL CARRIER LIKE ALASKA AIR INTERNATIONAL WHICH MAY OPERATE AS U.S. COMPANY OUT OF BOTSWANA, SERVING NEIGHBORING COUNTRIES. BOTSWANA WOULD PRESUMABLY BE SATISFIED WITH "PLACE OF MANAGEMENT" RATHER THAN "INCORPORATION" TEST. SOME QUESTIONS RAISED RE EXTENSION OF EXCEPTION FOR CONTAINERS.

E. DIVIDENDS. FIFTEEN PERCENT RECIPROCAL WITHHOLDING AGREED.

F. INTEREST. GENERAL FIFTEEN PERCENT RATE WITH EXEMPTION FOR INTEREST RECEIVED BY GOVERNMENT OR INSTRUMENTALITY. ALSO EXEMPT INTEREST PAID BY GOVERNMENT OR INSTRUMENTALITY TO ANY LENDER IN OTHER COUNTRIES IF LOAN GUARANTEED OR INSURED BY GOVERNMENT OR INSTRUMENTALITY OF OTHER COUNTRIES.

G. ROYALTIES. RECIPROCAL EXEMPTION APPARENTLY AGREED. BOTSWANA NORMALLY TAXES ON NET BASIS. RECIPROCAL EXEMPTION LIMITED OFFICIAL USE

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POSES POTENTIAL PROBLEM OF MAKING BOTSWANA TAX HAVEN FOR COMPANIES ESTABLISHING IN BOTSWANA TO LICENSE IN U.S. BECAUSE OF COMBINATION OF U.S. TREATY EXEMPTION AND BOTSWANA SOURCE BASIS. THIS COULD BE RESOLVED BY A SUBJECT TO TAX RULE.

H. CAPITAL GAINS. ARTICLE DELETED. BOTSWANA DOES NOT TAX CAPITAL GAINS AS SUCH, IMPOSING DIFFICULT DEFINITIONAL PROBLEMS.

I. INDEPENDENT SERVICES. BOTSWANA WANTS NO TIME LIMIT UNDER LAW, BOTSWANA TAXES ONLY ON SERVICES PERFORMED IN BOTSWANA AND ON NET BASIS. BOTH SIDES INDICATED WILLINGNESE CONSIDER COMPROMISE.

D

J. TEACHERS. DELETED AT BOTSWANA REQUEST. PREFER NOT TO CREATE PRIVILEGED CLASS.

K. STUDENTS. TENTATIVELY AGREED WITH USE OF HIGHER EXEMPTION FIGURES FOR U.S. THAN BOTSWANA.

L. RELIEF FROM DOUBLE TAXATION. BOTSWANA PROVISION TO REFLECT NO BOTSWANA TAX ON FOREIG SOURCE INCOME. PRINRIPAL PROBLEM IS MINING TAX.

M. NONDISCRIMINATORY. BOTSWANA CONUIDERING BUT RAISED NO PARTICULAR PROBLEM.

4. ISSUES NOT NOTED ABOVE APPARENTLY RESOLVED ALONG LINES U.S. DRAFT, THOUGH OTHER POTENTIAL PROBLEMS NOT DISCUSSED MAY WELL BE RAISED ON FURTHER REFLECTION BY EITHER SIDE. THOMSEN

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